

NEW JERSEY DEPARTMENT OF LABOR
AND WORKFORCE DEVELOPMENT
DIVISION OF WORKERS' COMPENSATION
CLAIM PETITION NO. 2000-32475
2001-18060
2000-32442

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RICARDO DeJESUS,

Petitioner,

RESERVED DECISION

-v-

JOFFE LUMBER AND SUPPLY

COMPANY and WASTE

MANAGEMENT, INC.,

Respondent.

Thursday,

March 16, 2005

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B E F O R E: THE HONORABLE ROBERT F. BUTLER
JUDGE OF COMPENSATION

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23 As indicated, the only
24 issue that remains to be determined is the
25 dollar amount of the petitioner's child

1 support arrearages that must be deducted from
2 these two awards. This deduction was
3 mandated by the terms of N.J.S.A. 2A:17-56.7a
4 et seq, the New Jersey Child Support
5 Improvement Act that became law on
6 August 14th, 2000. That Act provided that a
7 judgment for child support shall constitute a
8 lien against the net proceeds of certain
9 legal proceedings and specifically included
10 "workers' compensation award[s]."

11 The relevant language of
12 this statute is contained in NJ.S.A.
13 2A:17-56.23b and provides: "a. A judgment for
14 child support...docketed with the clerk of the
15 Superior Court shall be a lien against the net
16 proceeds of any settlement negotiated prior or
17 subsequent to the filing of a lawsuit, civil
18 judgment, civil arbitration award, inheritance
19 or workers' compensation award.

20 ...The lien shall stay the
21 distribution of net proceeds to the
22 prevailing party or beneficiary until the
23 child support judgment is satisfied.

24 As used in this act, 'net
25 proceeds' means any amount of money in excess

1 of \$2,000 payable to the prevailing party or
2 beneficiary after [litigation costs]."

3 Subsequent to the
4 enactment of this statute, the Division of
5 Workers' Compensation implemented the terms
6 of the Act by establishing procedures for
7 both the calculation and collection of child
8 support arrearages. These were developed in
9 accordance with the guidance provided to the
10 Division by the Administrative Office of the
11 Courts, hereinafter referred to as the AOC.

12 That guidance was
13 contained in what it refers to as its "advice
14 letter" of August 31st, 2000 addressed to the
15 Director/Chief Judge of the Division.

16 In this letter it was
17 indicated that the determination as to the
18 amount of child support arrearages to be
19 deducted from a workers' compensation
20 recovery should vary depending upon whether
21 the "net award is purely a lump sum and not
22 'accrued disposable earnings'" as contrasted
23 to an award that "may constitute accrued
24 disposable earnings as defined in the federal
25 restrictions in garnishment." The term

1 "federal restrictions" refers to the
2 provisions of the Federal Consumer Credit
3 Protection Act, 15 U.S.C.A, page 1673 et seq,
4 hereinafter referred to as the "Federal Act".

5 That Act establishes a
6 maximum allowable garnishment amount that may
7 be deducted from a worker's "disposable
8 earnings" as being 25 percent.

9 15 U.S.C.A. page 1672
10 defines "disposable earnings" as "that part
11 of...earnings...remaining after the
12 deduction...of any amounts required by law to
13 be withheld" such as taxes. In turn
14 "earnings" is defined as "compensation paid
15 or payable for personal services, whether
16 denominated as wages, salary, commission,
17 bonus, or otherwise, and includes periodic
18 payments pursuant to a pension or retirement
19 program."

20 The Federal Act did
21 provide certain exceptions to that maximum,
22 one of which applied to individuals subject
23 to garnishment for child or spousal support
24 obligation. That exception provided that;

25 "...The maximum part of

1 the aggregate disposable earnings of an
2 individual for any workweek which is subject
3 to garnishment to enforce any order for the
4 support of any person shall not exceed --

5 (A) where such individual
6 is supporting his spouse or dependent child
7 (other than a spouse or child with respect to
8 whose support such order is used), 50 per
9 centum of such individual's disposable
10 earnings for that week; and

11 (B) where such individual
12 is not supporting such a spouse or dependent
13 child described in clause (A), 60 per centum
14 of such individual's disposable earnings for
15 that week;

16 except that, with respect
17 to the disposable earnings of any individual
18 for any workweek, the 50 per centum specified
19 in clause (A) shall be deemed to be 55 per
20 centum and the 60 per centum specified in
21 clause (B) shall be deemed to be 65 per
22 centum, if and to the extent that such
23 earnings are subject to garnishment to
24 enforce a support order with respect to a
25 period which is prior to the twelve-week

1 period which ends with the beginning of such
2 workweek." U.S.C.A. 1673 (b) (2).

3 Based upon its review of
4 the Act and the Federal Act, the AOC
5 suggested and the Division of Workers'
6 Compensation implemented the following
7 directive to be observed by the judges of
8 compensation when addressing this issue;

9 "If the obligor is
10 currently supporting a child or spouse not
11 under a court order, and if the number of
12 weeks of arrears above is 12 or less, the
13 maximum payable to probation is 50 percent of
14 the net award.

15 If the obligor is
16 currently supporting a child or spouse not
17 under a court order, and if the number of
18 weeks of arrears above is more than 12, the
19 maximum payable to probation is 55 percent of
20 the net award.

21 If the obligor is not
22 currently supporting a child or spouse not
23 under a court order, and if the number of
24 weeks of arrears above is 12 or less, the
25 maximum payable to probation is 60 percent of

1 the net award.

2 If the obligor is not
3 currently supporting a child or spouse not
4 under a court order, and if the number of
5 weeks of arrears above is more than 12, the
6 maximum payable to probation is 65 percent of
7 the net award."

8 Additionally, lump sum
9 payments, when approved by the Court,
10 pursuant to Section 20 of the Workers'
11 Compensation Act in cases where issues such
12 as compensability were disputed were to be
13 applied in full to satisfy child support
14 liens but for the statutory \$2,000 exclusion
15 and other allowances permitted by Section
16 56.23 b(a) of the Act.

17 Initially it was the
18 policy of the Division that net awards
19 representing benefits payable over a period
20 of time and that equaled or exceeded \$2,000
21 were subject in their entirety to the support
22 lien and the workers' compensation formula.
23 Conversely, if a net award was less than
24 \$2,000 none of it was subject to the lien or
25 the workers' compensation formula.

1 However, that policy
2 changed following and pursuant to the
3 decision in Simpkins v. Adolfo Saiani and
4 State Farm Insurance Company, 356 N.J. Super
5 26 (2002). In that case the Court decided
6 that the legislature had intended the
7 designated \$2,000 to act as an exemption to
8 the lien in all cases regardless of the
9 amount of the net recovery involved.

10 As the Court stated, to
11 decide to the contrary would provide an
12 incentive "...to a party to manipulate the
13 amount recoverable after deduction of
14 litigation costs where that amount is
15 approximately \$2,000 or slightly more."

16 Following that decision
17 the Division altered its policy so as to
18 subject to the prescribed formula only those
19 net awards that exceeded \$2,000.

20 This Court's records
21 indicate that the settlement approved in
22 these two consolidated cases today were
23 initially agreed upon between the parties in
24 October 2004. However, because of certain
25 facts that were unique to the child support

1 lien here involved, concomitant litigation
2 was instituted in the Superior Court.

3 It is appropriate at this
4 point to reflect the procedural history of
5 that proceeding so that this record will be
6 complete and the basis of this Court's
7 decision will be clear.

8 In June 1999 Catherine
9 Wright applied to the Cumberland County Board
10 of Social Services, hereinafter referred to
11 as "the Board", and sought public assistance
12 for herself and her three minor children all
13 of whom had been fathered by the petitioner.
14 Thereafter an order was entered against the
15 petitioner directing him to make certain
16 support payments. He failed to do so, and on
17 October 5th, 1999 a child support judgment
18 was entered and docketed with the Superior
19 Court.

20 On August 8th, 2001 the
21 Cumberland County Superior Court Chancery
22 Division, Family Part entered an order
23 restraining the disbursement of proceeds from
24 any claims pending before the workers'
25 compensation court. On August 28th the

1 petitioner filed a motion in the Superior
2 Court in which the Court was requested to
3 vacate the above mentioned restraining order
4 and to direct payment of the child support
5 lien in an amount to be determined in
6 accordance with the formula established by
7 the Division of Workers' Compensation as set
8 forth previously.

9 A responsive pleading was
10 filed on behalf of the Board in which it
11 asserted that the proceeds of the workers'
12 compensation awards must be applied toward
13 the child support lien in accordance with the
14 act. Specifically the Board alleged that it
15 was due all in excess of \$2,000 after payment
16 of any other allowances permitted by the
17 state statute.

18 Following oral argument by
19 the petitioner and the Board an order of the
20 Superior Court was entered on January 6th,
21 2005 whereby the previously entered
22 restraining order was vacated and payment of
23 the child support judgment was ordered in an
24 amount to be determined in accordance with
25 the procedures utilized by the New Jersey

1 Division of Workers' Compensation.

2 An application to the
3 Superior Court for reconsideration was filed
4 by the Board. That application was denied on
5 March 31st, 2005.

6 Thereafter a notice of
7 appeal was filed by the Board with the
8 Appellate Division of the Superior Court. In
9 the appeal the Board asserted that the
10 Division's procedure and formula as it is
11 applied to awards that are payable over time
12 are incorrect because they are contrary to
13 N.J.S.A. 2A:17-56.23b. It argued that the
14 formula set forth in that statute should
15 apply regardless of whether the workers'
16 compensation proceeds in question represent a
17 lump sum or benefits payable over time.

18 In its opinion of January
19 9th, 2006 the Appellate Division decided that
20 the issue whether the Division's procedures
21 violated N.J.S.A. 2A:17-56.23b was a question
22 more appropriately to be decided by the
23 Workers' Compensation Division rather than
24 the Appellate Division.

25 Consequently, the opinion

1 reversed the decision below, stayed the
2 distribution of the petitioner's workers'
3 compensation settlement funds and transferred
4 the case to the Division for determination.
5 Because the Division's procedures and formula
6 regarding this subject were based upon
7 guidelines provided by the AOC, the Appellate
8 Division directed that the AOC be given an
9 opportunity to intervene in the proceedings
10 before the Division.

11 After this matter had been
12 transferred to this Division, the AOC has
13 participated in the last conference of these
14 two claims and it has submitted a brief
15 outlining its position. With this procedural
16 history in mind, this Court will now address
17 the issue at hand.

18 A cursory comparison of
19 the state statute's formula for satisfying
20 child support from a "...workers'
21 compensation award", with the federal
22 statute's formula for calculating the maximum
23 amount garnishable to satisfy the same
24 purpose would seem to reveal an inconsistency
25 between the two. Since the Division's

1 procedures were based to a large extent upon
2 the federal statute, an inconsistency between
3 those procedures and the state's statute
4 would also seem apparent.

5 If such were the case,
6 this Court's decision would be relatively
7 simple. It is a well-established principle
8 that the law of the state must yield when its
9 terms are incompatible with federal
10 legislation. Sperry v. Florida, 373 U.S. 384
11 (US 1963).

12 However, a more thorough
13 examination of those statutes reveals no
14 obvious inconsistency. The sole and avowed
15 purpose of the federal statute is to protect
16 the interest of wage earners. It does so by
17 establishing maximum amounts of garnishment
18 to be allowed as deductions from wages.
19 Basically that maximum is 25 percent of a
20 wage earner's "disposable earnings".

21 The statute deals with no
22 other subject. There is no reference to a
23 creditor's right of access to any other asset
24 belonging to a wage earner. There is no
25 reference to civil recoveries or workers'

1 compensation awards of any kind. The only
2 aspect of the statute that it has in common
3 with the state statute is its reference to a
4 wage earner's support obligation for a child
5 or other person. As to that obligation the
6 statute allows an exception to the previously
7 stated garnishment maximum. The maximum
8 allowed under these circumstances is
9 increased from 25 percent to 50 percent to
10 65 percent depending upon the factors
11 mentioned in the Act.

12 With respect to the state
13 statute, its avowed purpose is to provide the
14 authority and methodology to satisfy child
15 support judgments. Unlike the federal
16 statute that addresses only the garnishment
17 of wages, the state statute provides that a
18 child support judgment shall constitute a
19 lien upon the "net proceeds" of any
20 settlement regarding a "lawsuit, civil
21 judgment, civil arbitration award,
22 inheritance or workers' compensation award."
23 Only those items are intended to be affected
24 by the statutory formula that subject the
25 entire "net proceeds" beyond \$2,000 to the

1 child support judgment.

2 Neither this section of
3 the statute nor its formula is intended to
4 apply to an individual's wages. The only
5 potential for conflict between these two
6 statutes in a workers' compensation setting
7 would occur in a factual situation where an
8 award would represent reimbursement of
9 "earnings" or by analogy, wage replacement.
10 Under those circumstances the federal statute
11 would prevail and the federal rather than the
12 state formula would apply.

13 As such the Court must
14 analyze the nature of the workers'
15 compensation "settlement" sought to be
16 subject to the state's lien by the Board in
17 this case.

18 The Workers' Compensation
19 Act provides for three sources of monetary
20 payments to an injured worker: temporary
21 disability benefits, permanent benefits and
22 the proceeds of a contested workers'
23 compensation claim settlement paid pursuant
24 to Section 20 of the Act.

25 Temporary disability

1 benefits are payable to an injured worker
2 until the employee is able to resume work and
3 continue permanently thereafter, or until he
4 is as far restored as the permanent character
5 of his injuries will permit, whichever
6 happens first Tamecki v. Johns-Manville,
7 125 N.J. Super 355, 311 A.2d 20, (App. Div.
8 1973).

9 The law is
10 well-established that these benefits
11 represent payments in lieu of weekly salary.
12 Young v. Western Electric Company Inc. 96
13 N.J. 220 (1984). As such they are subject to
14 the federal formula rather than the state
15 formula for child support purposes.

16 Permanent disability
17 benefits are those that are awarded to the
18 petitioner to compensate him for the
19 permanent residuals of his compensable
20 accident or occupational exposure. As stated
21 by Professor Arthur Larson, one of the
22 leading authorities on workers' compensation
23 law in the United States, the Workers'
24 Compensation Acts in each of the United
25 States provides compensation for the

1 permanent residuals of a work-related
2 accident based upon an earnings impairment
3 theory, a physical impairment theory or a
4 combination of both. Workers' compensation
5 law: Cases, materials, and text, Third
6 Edition, Lex, Larson and Arthur Larson (2000)
7 at 363 to 368.

8 In a state whose Workers'
9 Compensation Act abides by an earnings
10 impairment or "wage replacement" theory, such
11 as Pennsylvania, the injured worker is
12 generally awarded a weekly benefit based upon
13 the amount that his weekly wages have been
14 reduced due to his injury. L.E. Smith Glass
15 Company v. Workers' Compensation Appeal
16 Board, 571 Pa. 594, 813 A.2d 634 (2002).

17 Permanent disability
18 awards in Pennsylvania are intended to
19 represent a replacement for "earnings". As
20 such the federal statute and its formula
21 would prevail if there were a conflicting
22 garnishment statute in effect in the state of
23 Pennsylvania. In contrast, the New Jersey
24 Workers' Compensation Act is based upon the
25 physical impairment theory. Permanent

1 disability awards in this jurisdiction are
2 not based upon nor are they intended to
3 replace earning power. Rather they represent
4 "compensation for...physical impairment."
5 Young Supra at 226.

6 The fact that the Workers'
7 Compensation Act in this state represents the
8 embodiment of that theory is best evidenced
9 by what Professor Larson considers to be the
10 cornerstone of this theory; the presence of a
11 "schedule" in the statute. Larson Supra at
12 363-364.

13 This permanent disability
14 schedule facilitates the calculation of the
15 dollar equivalent of the petitioner's
16 permanent disability award once the judge has
17 either determined or approved the percentage
18 of his or her disability. It clearly
19 evidences the fact that all permanent
20 disability awards represent compensation for
21 functional loss or impairment rather than
22 wage replacement in the State of New Jersey.

23 Consequently, permanent
24 disability awards do not constitute
25 "earnings" or earnings/wage replacement

1 subject to the federal statute and its
2 formula. They are instead "net proceeds"
3 subject to the state's statute and its
4 formula.

5 The third and final source
6 of monetary payments to an injured worker in
7 New Jersey is that which is authorized by
8 Section 20 of the Workers' Compensation Act.
9 This section allows the judge of compensation
10 to approve a settlement between the employer
11 and the employee in any case in which
12 jurisdiction, liability, causal relationship
13 or dependency are in dispute

14 A payment pursuant to this
15 section must be made in a lump sum and once
16 approved it has "...the force and effect of a
17 dismissal of the claim petition and shall be
18 final and conclusive upon the employee and
19 the employee's dependents, and shall be a
20 complete surrender of any right to
21 compensation or other benefits arising out of
22 such a claim under the statute."

23 The lump sum of money
24 authorized by this section does not and
25 cannot constitute an "award", "benefit" or

1 payment of "compensation" as those terms are
2 defined by the statute but for the fact that
3 it represents a "benefit" for insurance
4 rating purposes only.

5 The importance of these
6 last comments lie in the fact that an award
7 of benefits of any kind, temporary, medical
8 or permanent, carry with them the right to
9 seek additional future benefits. N.J.S.A.
10 34:15-51 and 34:15-54.

11 Because this lump sum
12 cannot constitute an award, benefit or
13 compensation, there is no basis whatsoever
14 for categorizing this payment as "earnings"
15 as utilized in the federal statute. Nor can
16 it be considered a wage replacement so as to
17 allow it the protection of the federal
18 formula when a child support judgment is
19 applicable. Consequently, a Section 20 lump
20 sum payment is subject to the state statute
21 and formula when the payment of a child
22 support judgment is in issue

23 Having made the above
24 determination, this Court finds that a
25 portion of the Workers' Compensation

1 Division's present procedures extend the
2 protection of the federal statute and its
3 formula to certain payments payable to a
4 petitioner when in fact they fail to so
5 qualify. Instead, I find that these
6 payments, namely awards of permanent
7 disability benefits, are subject to the
8 formula of the state statute.

9 As indicated earlier in
10 this decision, the Division implemented the
11 child support judgment collection
12 requirements of the state statute based upon
13 the advice letter and the subsequent
14 communications of the AOC. To capsulize that
15 letter's content, a "lump sum" payment was
16 subject in its entirety to the child support
17 lien pursuant to the state statute and
18 formula.

19 As indicated in the AOC's
20 March 7, 2006 letter brief to this Court,
21 awards that were "payable over time" were to
22 be considered subject to the 50 percent to
23 65 percent formula. As indicated in the AOCs
24 original advice letter, this formula was to
25 be applied to all awards of temporary and

1 permanent disability benefits. Pursuant to
2 the above, the Division established the
3 policy that required the workers'
4 compensation judges to apply the entirety of
5 Section 20 lump sum payments to any existing
6 child support lien pursuant to the state
7 statutory formula. Additionally, that policy
8 required the judges to apply the formula of
9 50 percent to 65 percent to any award of
10 permanent or temporary disability benefits.

11 For the reasons set forth
12 above, I find that the application of the
13 federal formula to an award of temporary
14 disability benefits is appropriate but that
15 its application to awards of permanent
16 disability is not. Temporary disability
17 benefits constitute "earnings" or wage
18 replacement and are entitled to the federal
19 protection, but permanent disability benefits
20 do not so qualify. They are subject to the
21 state statute and formula.

22 This Court notes that in
23 its brief the AOC concedes that its original
24 advice to the Division that distinguished the
25 application of these two statutes upon the

1 method of payment of the workers'
2 compensation benefits was in error. The
3 AOC's current position supports this Court's
4 finding that the determining factor regarding
5 the application of these two statutes is
6 whether the workers' compensation proceeds
7 represent a "loss of earnings" or not.

8 To repeat that which was
9 indicated earlier, lump sum payments made
10 pursuant to Section 20 do not qualify as
11 either "earnings" or wage replacement and are
12 not subject to the federal formula. They
13 remain subject to the state statute and
14 formula consistent with the Division's
15 current policy and procedures.

16 Before assessing the
17 dollar amount of the child support payable in
18 this case, including counsel fees and costs,
19 one further comment concerning these statutes
20 is deemed appropriate.

21 While researching and
22 analyzing the cases, statutes, briefs and
23 materials associated with this decision, this
24 Court found itself pondering a hypothetical
25 situation that was cause for concern. What

1 fate should befall the petitioner who is
2 found to be totally and permanently disabled,
3 is subject to a substantial child support
4 judgment, is not in receipt of social
5 security benefits and has no source of income
6 but for his workers' compensation disability
7 benefits?

8 A strict interpretation of
9 the statute might seem to require the
10 application of the state statute because his
11 total disability benefits technically do not
12 represent "wage replacement" payments.
13 Should he be stripped of all his weekly
14 benefits but for the \$2,000 allowance until
15 his child support judgment is satisfied?

16 However, unlike the usual
17 recipient of a permanent partial disability
18 award who continues to work and receive
19 weekly wages when his award is subjected to
20 an arrearages lien, this hypothetical
21 petitioner has no other source of income
22 other than disability benefits to provide the
23 necessities of life to himself and his
24 family. Should not his total disability
25 weekly benefits rightly be considered to

1 represent "wage replacement" thereby
2 justifying application of the federal statute
3 and formula so as to avoid leaving him
4 practically destitute until a support
5 judgment is satisfied? These facts are not
6 before me for a decision. However, they
7 certainly seem to be "food for thought" for
8 all to consider.

9 That being said, I will
10 now address the issue of counsel fees, costs
11 and the amount to be paid to the probation
12 department for the partial satisfaction of
13 Mr. DeJesus' child support arrearages.

14 Based upon the decision
15 now rendered and for the reasons provided,
16 I'm satisfied that both permanent partial
17 disability awards which are the subject of
18 these resolutions are subject to the state
19 statute rather than the federal formula and
20 the formula established by the Workers'
21 Compensation Division.

22 So consequently, I will
23 assess the following fees and allowances.
24 First by way of reimbursement to petitioner's
25 counsel from the award, \$10 for Regional

1 medical records; and secondly, a counsel fee
2 to Mr. Kuhnreich for his services in the
3 amount of \$1,655. I will apportion that so
4 that \$660 is deducted from the petitioner's
5 award and \$995 is paid by the respondent.

6 Pursuant to the state
7 statute, after the deduction of those fees
8 and allowances, all but \$2,000 is to be paid
9 to the Cumberland County Probation
10 Department. And if the calculations provided
11 to me are correct, that would indicate that
12 the sum total of \$5,610 is to be paid to the
13 Cumberland County Probation Department for
14 partial satisfaction of the child support
15 arrearages indicated. As to this claim
16 petition, that is 2000-32475, I will assess a
17 stenographic fee in the amount of \$85, and
18 that sum shall be paid by the respondent.

19 As to the second matter,
20 Claim Petition No. 2001-18060, I will allow
21 reimbursement to Mr. Kuhnreich's office of
22 the following: First to be deducted from the
23 petitioner's award will be \$13.88, \$20, \$45,
24 \$21, and \$19.83 for the reimbursement for the
25 records necessary for the prosecution of this

1 case. I will allow \$400 each for the medical
2 evaluations and reports of Drs. Cataldo and
3 Ruben. They too will be reimbursed to
4 petitioner's counsel and the cost of those
5 will be shared equally between the parties.
6 I will direct that the Medicaid lien in the
7 amount of \$6,087.22 be paid from the
8 petitioner's award to satisfy that lien.

9 Off the record.

10 (Discussion off the
11 record.)

12 THE COURT: Based on these
13 assessments and allowances there appears only
14 a net of \$506.07 remaining. And since that
15 is less than the \$2,000 exemption allowed by
16 the state statute, there are no additional
17 proceeds that will be paid to the Cumberland
18 County Probation Department to partially
19 satisfy the arrearages from this proceeds.
20 And so consequently the total of \$506.07 will
21 be paid to the petitioner. I will assess a
22 stenographic fee in the amount of \$85, and
23 that sum shall be paid by the respondent.

24 - - -
25